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5 Attorney for Creditor, FRANK FIORITO

11 IN RE:) CASE NO. 20-01895-LT7
12)
13 TIMOTHY JOSEPH GRANT,) RS NO. TJS-1
14)
15) AMENDED MOTION FOR RELIEF
16 Debtor.) FROM AUTOMATIC STAY AND
17) EXCEPTION FROM DISCHARGE
18)
19)
20 FRANK FIORITO,)
21)
22)
23 Moving Party.)
24)
25 v.)
26)
27)
28 TIMOTHY JOSEPH GRANT, Debtor,)
29 LEONARD J. ACKERMAN,)
30 Trustee,)
31)
32)

21 Movant, FRANK FIORITO, respectfully moves this Court for an
22 Order Granting Relief From the Automatic Stay and Exception from
23 any Discharge issued to the Debtor so that he may proceed with a
24 legal malpractice action against the Debtor, TIMOTHY JOSEPH GRANT,
25 and the partnership in which he operated his law practice.

1 Fredrickson, Mazeika & Grant, LLP. As to the Debtor, Movant will
2 agree to only seek damages from the Debtor to the extent of the
3 Debtor's malpractice insurance policy.

4 In support of the motion Movant respectfully represents:

5 1. The Debtor filed a petition for relief under chapter 7 of
6 United States Bankruptcy Code with this Court on April 3, 2020.
7 Leonard J Ackerman is the court appointed bankruptcy trustee for
8 the case. The Chapter 7 trustee filed his no asset distribution on
9 April 30, 2020.

10 2. The Debtor, TIMOTHY JOSEPH GRANT, is an attorney who at
11 all times mentioned herein was licensed to practice law in the
12 state of California.

13 3. The Debtor was a partner in the law firm of Fredrickson,
14 Mazeika & Grant LLP ("FMG").

15 4. FRANK FIORITO is a professional fiduciary who was hired by
16 LESLIE BARONE ("BARONE") to manage BARONE's financial assets.

17 5. FIORITO, in the scope and course of acting as BARONE's
18 fiduciary, discovered that she had potential claims against GERALD
19 L. BECKWITH ("BECKWITH") arising from BECKWITH's mismanagement of
20 BARONE's finances and self-dealing transactions.

21 6. FIORITO and BARONE retained the Debtor and FMG to
22 represent them in relation to BARONE's claim against BECKWITH
23 including transactions between BARONE and BECKWITH on the real
24 property located at 18395 Colinas Fuerte, Rancho Santa Fe,
25 California (the "Property").

1 7. Even though the Debtor knew that BARONE had executed an
2 unrecorded Quitclaim Deed transferring her interest in the Property
3 to BECKWITH, the Debtor advised preparing and recording a Quitclaim
4 Deed transferring BARONE's interest in the Property to FIORITO.
5 This was done to prevent BECKWITH from selling the Property and to
6 protect any potential recovery from BECKWITH.

7 8. The Debtor then advised and represented FIORITO in filing
8 an action in the San Diego Superior Court seeking to partition the
9 Property.

10 9. BECKWITH filed a cross-action against FIORITO alleging
11 causes of action for slander of title, violation of penal code
12 section 496(a), cancellation of deed, quiet title and financial
13 elder abuse. The Debtor and FMG represented FIORITO in the cross-
14 action.

15 10. FIORITO, upon the advice of the Debtor and FMG recorded
16 a lis pendens against the Property. BECKWITH filed a motion to
17 expunge the lis pendens which was granted and FIORITO was ordered
18 to pay attorney's fees to BECKWITH.

19 11. FIORITO claims that the Debtor was negligent in the
20 advice given to him and in the actions taken in the representation
21 of FIORITO and BARONE, including those actions set forth in this
22 motion.

23 12. As a result of the acts and omissions of the Debtor and
24 FMG, FIORITO has suffered damages and attorney's fees.

25 13. Prior to the Debtor's Bankruptcy filing, FIORITO submitted

1 a claim to the Debtor, FMG, and the Debtor's attorney, who FIORITO
2 is informed and believes, has been retained by the Debtor's legal
3 malpractice insurance carrier. The Debtor's defense counsel
4 acknowledged receiving the claim.

5 14. FIORITO now seeks relief from the automatic stay to pursue
6 a legal malpractice action against the Debtor and FMG. To the
7 extent that FIORITO obtains a recovery on his claim he stipulates
8 and agrees that any recovery in that action against the Debtor will
9 be limited to recovering from the Debtors malpractice insurance
10 policy.

11 15. Fiorito is informed and believes and thereon alleges that
12 the Debtor's malpractice insurance company will defend the Debtor
13 and FMG in any action so that there would be no cost to the Debtor
14 or to the Debtor's bankruptcy estate in any litigation filed by
15 FIORITO.

16 16. FIORITO further seeks to except from any discharge that
17 the Debtor receives pursuant to 11 USC section 727 action to pursue
18 a legal malpractice action against the Debtor solely to the extent
19 of the debtors malpractice insurance.

20 17. This motion is being made for relief from stay for cause
21 pursuant to 11 USC section 362(d)(1) and for exception from the
22 discharge pursuant to 11 USC sections 727 and 524(a).

23 18. FIORITO stipulates and agrees that in any action against
24 the Debtor he will not seek to collect on any assets of the Debtors
25 estate or seek to collect from the Debtor personally without

1 further order from this Court.

2 WHEREFORE, FRANK FIORITO is hereby requesting relief from the
3 automatic stay so that he may proceed with filing and prosecuting
4 a legal malpractice lawsuit against the Debtor, Timothy Joseph
5 Grant, and Fredrickson, Mazieka, & Grant, LLP, and that the filing
6 and prosecution of such lawsuit is an exception to any discharge
7 granted to the Debtor subject to being limited, as to the Debtor,
8 to collecting or recovering from the Debtor's malpractice insurance
9 policy, without any further order from the Court and for such other
10 orders and relief as this Court deems just and proper.

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Dated: July 6, 2020



Timothy J. Sullivan, Attorney
for FRANK FIORITO

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In re: TIMOTHY JOSEPH GRANT
Case No. 20-01895-LT7
RS No. TJS-1
AMENDED MOTION FOR RELIEF FROM STAY